

Applicant : John W. Schell
Serial No. : 10/665,094
Filed : September 17, 2003
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Art Unit : 3726
Examiner : Hong, John C.

Amendments to the Drawings

Fig. 3A has been amended to show reference numeral 318, which was inadvertently omitted in the original drawings. Attached are a replacement sheet and a version marked to show the change. No new matter has been added.

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REMARKS

Claims 1-50 and 57-62 are pending with claims 1, 12, 23, 33, 41, and 57 being independent. Claims 51-56 have been cancelled without prejudice and claims 57-62 have been added. No claims have been amended.

Drawings

The drawings have been objected to under 37 C.F.R. § 1.83(a) for failure to show reference numeral 318. Attached is a replacement sheet showing FIG. 3A with reference numeral 318 added. No new matter has been added.

35 U.S.C. § 102(b) Rejection

Claim 41 has been rejected under 35 U.S.C. § 102(b) as being anticipated by EP 1122195 (“the ‘195 application”). For at least the following reasons, Applicants respectfully request withdrawal of this rejection.

Claim 41 relates to a nail spacing verification assembly for use with a nail loading assembly of a nail gun, and recites “means for determining the spacing between nails of a collated nail strip in the nail loading assembly and allowing the nails to advance when the spacing of the nails in the collated nail strip is determined to be correct for use by the nail gun.” The ‘195 application fails to describe at least these features of claim 41. Rather, the ‘195 application describes a high speed singulator for agricultural products. The singulator includes a plurality of parallel conveyors and an activator for moving an item from a high speed conveyor to a slow speed conveyor, and a detector 18 (which the Office Action equates to the claimed means for determining spacing between nails of a collated nail strip) for determining a space between items on the faster conveyor.

The Office Action asserts that “a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.” Office Action at ¶ 4 (citing Ex parte Masham, 2 U.S.P.Q. 2d 1647 (1987)). However, the Office Action fails to recognize that claim

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41 is recited using means-plus-function language, under 35 U.S.C. § 112, sixth paragraph. As such, "the application of a prior art reference to a means or step plus function limitation requires that the prior art element perform the identical function specified in the claim." M.P.E.P. § 2182 (emphasis added). The singulator described in the '195 application is not able to perform the functions recited in claim 41. Accordingly, claim 41 is not anticipated by the '195 application.

For at least the foregoing reasons, claim 41 is patentable over the '195 application.

Allowed Claims

Applicants acknowledge the allowance of claims 1-32 and the indication of allowable subject matter in claims 42-50, which depend from claim 41.


Conclusion

Applicants do not acquiesce to the characterizations of the art. For brevity and to advance prosecution, however, Applicants have not addressed all characterizations of the art, but reserve the right to do so in further prosecution of this or a subsequent application.

No fees are believed to be due. Please apply any charges or credits to deposit account 02-2548.

Respectfully submitted,

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